



# राजपत्र, हिमाचल प्रदेश

## (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

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शिमला, मंगलवार, 25 अगस्त, 1981/३ भाद्रपद, 1903

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हिमाचल प्रदेश सरकार

श्रम विभाग

अधिसूचना

शिमला, 29 मई, 1981

संख्या 8-20/80-श्रम.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का अधिनियम संख्या-14) की धारा 17 के अनुसरण में राज्यपाल, हिमाचल प्रदेश निम्नलिखित वर्गों के मध्य चल रहे विवादों पर प्रीजाइंडिंग ऑफिसर, श्रम न्यायालय, हिमाचल प्रदेश द्वारा दिये गए निम्नांकित निर्णयों जो सरकार को दिनांक 11-2-81 को प्राप्त हुए हैं को प्रकाशित करने के सहर्ष आदेश देते हैं।

- (1) Shri Bal Raj *versus* Himachal Pradesh, P.W.D.
- (2) Shri Khima Vati *versus* S.E., Hydel Himachal Pradesh State Electricity Board.
- (3) Shri Jaishi Ram *versus* Himachal Pradesh State Electricity Board.
- (4) Smt. Santosh Raj *versus* Beas Sutlej Link Project.
- (5) Shri Itwari Ram *versus* Municipal Corporation, Simla.
- (6) Shri Lekh Ram *versus* Himachal Pradesh State Electricity Board.
- (7) Smt. Satya Devi *versus* Municipal Corporation, Simla.
- (8) Shri Itwari Ram *versus* Municipal Corporation, Simla.
- (9) Smt. Angrejo *versus* Municipal Corporation, Simla.
- (10) Shri Sardari Lal *versus* Municipal Corporation, Simla.
- (11) Smt. Shanti Devi *versus* Municipal Corporation, Simla.
- (12) Shri Mohan Lal *versus* Municipal Corporation, Simla.
- (13) Shri Madan Lal *versus* Beas Sutlej Link, Project.
- (14) Shri Karnail Singh *versus* Beas Sutlej Link Project.
- (15) Shri Gurdev Singh *versus* Beas Sutlej Link Project.
- (16) Shri Durga Dass *versus* Dehra Transport Co-operative Society.
- (17) Shri Ludes Ram *versus* H.P. Road Transport Corporation, Kulu.
- (18) Shri Lakhu Ram *versus* H.P. Road Transport Corporation, Simla.
- (19) Shri Durga Nand *versus* R.L. Vohra.
- (20) Shri Meher Chand *versus* G.M. Naya Bazar, Simla.
- (21) Shri Kishori Lal *versus* Shanker and Co., Simla.

Bla Raj *versus* XEN Mechanical Division of H.P. P.W.D., Dharamsala  
No 17/80

Application under section 33-C(2) of I.D. Act

3-7-1980 Presented by Shri P.L. Berry for the applicant issue notice to the respondents for  
16-10-1980 at Sundernagar. P.O.

16-10-1980 Present: Shri P.L. Berry for the applicant.

Notice of respondent not received back after service. Fresh be issued for  
8-11-1980 at Simla.

8-11-1980 Present: Shri P.L. Berry A.R. for the applicant.  
Shri J.N. Behal, XEN Mechanical Division, Dharamsala in person.

For filling reply further time is requested on the respondents' side. For reply to come up on  
20-1-1981 at Sundernagar.

20-1-1981 Present: Shri P. L. Berry A.R. for the applicant.

Shri J. N. Behal, XEN Mechanical Division, Dharamsala on behalf  
of the respondents:

### ORDER

The applicant was appointed as Turner in the scale of Rs. 70—95 *vide* appointment letter dated 16-11-1972 filed by the applicant with his claim petition. He now contends in para No. 8 of the Annexure to his claim *i.e.* claim petition dated 13-6-1980 that instead of the present scale of Rs. 70—95 D, he may be given the scale of Rs. 120—150 with effect from November, 1972 *i.e.* from the date of his appointment. This is a matter of claim to a different scale and category of employment as Turner than the applicant was offered and which he accepted. This scale of Rs. 70—95 is provided for in the letter dated 14-8-1972 copy mark 'X' of the Secretary, P.W.D. (H.P.). So this claim is not covered by section 33-C(2) of the Industrial Dispute Act. It is not a matter of existing right and computation of the monetary benefit on the basis of such a right. So this claim is dismissed.

2. However, I am told that, this is the only scale available to the applicant which has not been covered by the schemes of revision of pay scales adopted by the department in 1978 or prior to that. It is but fair that this scale should not remain an isolated scale in a stagnant and frozen form without taking into account the changing circumstances of high cost of living and other allied things. The respondent public Works Department will see that this scale is also covered by the scheme of revised pay scales.

3. This order copy be given to the parties.

The file be sent to the Secretary Labour Department, Government of Himachal Pradesh, Simla.  
Announced.

Dated 20th January, 1981.

H. D. KAINTHLA,  
*Presiding Officer, Labour Court.*  
*for State of Himachal Pradesh Circuit at*  
*Sundernagar.*

**Before Shri H. D. Kainthla, Presiding Officer, Labour Court for the State of  
Himachal Pradesh Circuit at Sundernagar**

Case No. 6 of 1980

Miss Khima Vati daughter of Shri Lal Mani Ledger Helper, Electrical Sub-Division, H.P.S.E.B., Mandi. ....*Applicant.*

*versus*

1. Superintending Engineer, Hydel Circle, H.P.S.E.B., Mandi and another ..*Respondents.*

Application under section 33-C(2) of Industrial Dispute Act

### ORDER

The applicant was admittedly appointed as Ledger Helper in the Electrical Division, H.P.S.E.B., Mandi where she is working till date, *vide* para 3 of the Annexure to the claim petition of the applicant under section 33-C(2) of Industrial Dispute Act.

2. The applicant further claims that throughout the duties of clerk were taken from her and the pay of the clerk is much more than that of a beldar, store-keeper or ledger-helper in para 4 of the said Annexure.

3. From the above claim petition averments of the applicant it is clear that she is asking for a claim of salary in a different scale and category of employment as clerk, than that of the ledger-helper to which she was appointed. This sort of claim is not covered under section 33-C(2) of the Industrial Dispute Act. It is not a claim for computation of monetary benefit available to the applicant by virtue of her appointment. The claim covers the monetary benefit attached to a different appointment. For such a claim regular Industrial Dispute shall have to be raised by the applicant and a reference to be decided by the Industrial Tribunal or Labour Court. Therefore, I reject this claim under section 33-C(2) of Industrial Dispute Act and she is at liberty to raise a regular Industrial Dispute referable for adjudication to Industrial Tribunal or Labour Court.

H. D. KAINTHLA,  
*Presiding Officer, Labour Court*  
*for State of Himachal Pradesh, Circuit at Sundernagar.*

Announced:  
Dated 21st January, 1981.

Shri Jaishi Ram Cowkidar H.P.S.E.B., Thalaul Section, Mandi

*versus*

Executive Engineer Rong Tong Division H.P. S.E.B., Sarabai, Bhunter.  
21st January, 1980—Again.

*Present:* Shri P. D. Sharma A.R. of the applicant Shri Jaishi Ram s/o Satish Sharma vice  
Shri S.M. Sood, Law Officer and B.C. Malhotra Labour Welfare Officer on behalf  
of the respondents.

### Case No. 20/79

A.R. of the applicant has appeared. He has made a statement that this petition is not to be prosecuted further but the applicant would seek remedy in the Civil Court. Accordingly this petition is withdrawn. No order as to costs.

The file be sent to Secretary, Labour Department, Government of Himachal Pradesh, Simla.

Announced.

H. D. KAINTHLA,

*Presiding Officer Labour Court,*

*for State of Himachal Pradesh, Circuit at Sundernagar.*

Dated: 21st January, 1981.

Shri Santosh Raj, Sundernagar.

*Versus*

B.S.L. Project, Sundernagar.

20-1-1980. *Present:* Shri P. L. Berry, A.R. for the applicant.

Shri R.P. Dogra, A.R. for the respondents.

### CASE NO. 4/78

#### ORDER

The respondents are ready to pay Rs. 827.14 P. out of retrenchment compensation after deducting the depreciated value of the tools i.e. Rs. 1,326.86 paise. The wages for two months are separately to be received by the applicant according to rules. This petition is accordingly disposed of.

The file be sent to Secretary, Labour Department, Himachal Pradesh Government, Simla,

Announced.

Dated: 20th January, 1981.

H. D. KAINTHLA,

*Presiding Officer, Labour Court for State  
of Himachal Pradesh, Circuit at Sundernagar.*

Itwari Ram Rajtary Jamadar,  
M.C., Simla.

*Versus*

Municipal Corporation, Simla

### CASE NO. 74 OF 1978

19-10-1980. *Present:* None.

Shri H.L. Sethi, Advoate , A.R. of the applicant was present on the last date of hearing and had been given today's date. The presondent is also not present despite service. In such a case the applications are dismissed for non-prosecution.

The file be sent to Secreary Labour Department Himachal Pradesh, Simla.  
Announced.

H. D. KAINTHLA,  
*Presiding Officer.*

Shri Lekh Ram, General Department, M. C. Simla

*Versus*

Executive Engineer, H.P. S.E.B., Simla-1.

CASE NO. 13 OF 1979

19-10-1980. Present: None.

The case is dismissed in default of prosecution.

The file be sent to Secretary, Labour Department, Himachal Pradesh, Simla.

Dated: 19th October, 1980.

H. D. KAINTHLA,  
Presiding Officer.

Shri Lekh Ram, General Department, M.C., Simla,

versus

Executive Engineer, H.P.S.E.B., Simla-I.

CASE NO. 13 OF 1979

19-10-1980. Present: None.

The case is dismissed in default of prosecution.

The file be sent to Secretary, Labour Department, Himachal Pradesh, Simla.

Dated: 19th October, 1980.

H. D. KAINTHLA,  
Presiding Officer.

Satya Devi, Sanjauli

versus

M.C., Simla.

CASE NO. 25/1977

19-10-1980. Present: None.

ORDER

Shri H.L. Sethi, Advocate A.R. for the applicant was present on the last date of hearing and had been given today's date. The respondent is also not present despite service. In such a case the applications are dismissed for non-prosecution. File be sent consigned.

H. D. KAINTHLA,  
Presiding Officer.

Itwari Ram

versus

M.C., Simla.

CASE NO. 106/78

19-10-1980. Present: None.

ORDER

Shri H.L. Sethi, Advocate A.R. for the applicant was present on the last date of hearing and had been given today's date. The respondent is also not present despite service. In such a case the applications are dismissed for non-prosecution. File be sent to the Labour Department, Government of Himachal Pradesh, Simla.

Announced.

H. D. KAINTHLA,  
Presiding Officer.

Smt. Angrejo, Lal Pani, Simla

versus

Municipal Corporation, Simla

CASE NO. 34/77

19-10-1980. Present: None.

ORDER

Shri H. L. Sethi, Advocate A. R. for the applicant was present on the last date of hearing and had been given today's date. The respondent is also not present despite service. In

such a case the applications are dismissed for non-prosecution. File be sent to the Labour Department, Government of Himachal Pradesh, Simla.

H. D. KAINTHLA,  
*Presiding Officer.*

Announced.

Sardari Lal, M.C., Simla

*versus*

Municipal Corporation, Simla

CASE No. 26/76

19-10-1980. *Present:* None.

Shri H.L. Sethi, Advocate A.R. of the applicant was present on the last date of hearing and had been given today's date. The respondent is also not present despite service. In such a case the applications are dismissed for non-prosecution.

The file be sent to Secretary, Labour Department, Himachal Pradesh, Simla.

Announced.

H. D. KAINTHLA,  
*Presiding Officer.*

Smt. Shanti Devi, Jakkhu, Simla

*versus*

M.C., Simla

CASE No. 73/78

19-10-1980. *Present:* None.

### ORDER

Shri H.L. Sethi, Advocate A.R. for the applicant, was present on the last date of hearing and had been given today's date. The respondent is also not present despite service. In such a case the applications are dismissed for non-prosecution. File be sent to the Labour Department, Government of Himachal Pradesh, Simla.

Announced.

H. D. KAINTHLA,  
*Presiding Officer.*

Mohan Lal, Krishna Nagar, Simla

*versus*

Municipal Corporation, Simla

CASE No. 116/78

19-10-1980. *Present:* None.

### ORDER

Shri H.L. Sethi, Advocate A.R. for the applicant, was present on the last date of hearing and had been given today's date. The respondent is also not present despite service. In such a case the applications are dismissed for non-prosecution. File be sent to the Labour Department, Government of Himachal Pradesh, Simla.

Announced.

H. D. KAINTHLA,  
*Presiding Officer.*

Shri Madan Lal, B.S.L. Workshop, Sundernagar  
*versus*

Chief Engineer, B.S.L. Project, Sundernagar

*Present:* Shri Dhani Ram, A.R. for the applicant.

Shri O. P. Verma, A.R. for the respondent.

CASE No. 17/79

16-10-80—The A.R. of the applicant Sh. Dhani Ram states that the respondents have proposed the house rent arrear bill and now he is satisfied. Thus the petition is now dismissed as satisfied. No order regarding costs. File be sent to the Labour Deptt. H.P. Simla.

Announced.

H. D. KAINTHLA,  
*Presiding Officer Labour Court.*  
H. P.; Simla.

Shri Karnail Singh, Lineman, Electrical Division No. 1, Sundernagar.  
*Versus*  
Chief Engineer, B.S.L. Project, Sundernagar

16-10-1980 Present: Shri Dhani Ram, A.R. for the applicant.  
Shri O.P. Verma, XEN, for the respondents.

CASE No. 57/79  
ORDER

On respondents side Shri O.P. Verma, has stated that the applicant was not paid House Rent Allowance from 4/1975 to 2/1976 and he is therefore, entitled to arrears of House Rent Allowance of Rs. 207. The respondent will prepare the bill for this amount to pay it to the applicant. Thus this application is decided with the direction that the respondent will pay this amount within six weeks. No order regarding costs. The file be sent to Secretary, Labour Department, Himachal Pradesh Simla.

Announced.

Dated: 16-10-1980.

H. D. KAINTHLA,  
Presiding Officer, Labour Court.

Before Shri H.D. Kainthla, Presiding Officer, Labour Court for State of Himachal Pradesh  
(District and Sessions Judge, Solan Division) Circuit at Sundernagar

Shri Gurdev Singh, Riggur T.No.246-D, Workship, B.S.L. Project, Sundernagar ..Applicant  
*Versus*

Personnel Officer, B.S.L. Project, Sundernagar (Himachal Pradesh) ..Respondent.  
Application under Section 33-C(2) of Industrial Dispute Act.

JUDGEMENT/ORDER

The applicant is working as a rigger in B.S.L. Project, (Beas-Sutlej Link Project). He has laid a claim for hazardous allowance from 1-4-1973 to 5/1977. The applicant alleges that in terms of letter No. 152-54/BP-200, dated 6-1-1976 from Secretary, Beas Construction Board, New Delhi hazard allowance to the work-charge staff in B.S.L. Project of different categories of employees has been sanctioned. That General Manager, Beas Construction Board vide letter No.1547/DP/25/61, dated 19-1-1977 had recommended the categories for the grant of said allowance which includes the applicant's job also. The applicant claims that he falls within the category D(i) as mentioned in letter dated 6-1-1976 mentioned above. He further states that he has been denied the said allowance from 1-4-1973 to 5/1977.

2. The B.S.L. Project has contested the claim of the applicant on legal as well as factual grounds. It is contended that this claim application is not maintainable as the applicant has no existing right. It is further contended that the applicant's case is not covered by the scheme of granting hazardous allowance as adopted by the respondents.

3. The following issues were formulated to settle the claim controversy between the parties:—

1. Whether the applicant as Riggur is entitled to hazardous allowance under the existing scheme of allowance prevalent in B.S.L. Project, vide letter No.158-54/BR-200, dated 6-1-1976? OPP
2. To what amount of allowance, if any, the applicant is entitled?
3. Relief.

## FINDINGS ON THE ISSUES

## Issue No. 1

4. The applicant stated that he received 20% of the pay as hazardous allowance as rigor from 1-7-1969 to 1973 but from 1-4-1973 onwards till 31-5-1977, when he laid this claim, he has not been paid the said allowance. In cross-examination he stated that after 1-4-1973 he can not give any instance of any rigor getting hazardous allowance.

5. The applicant has put letter dated 17-5-1973 marked Ex. PX to PW1 Shri M.K. Kapur S.D.O., Electrical Mechanical Division, B.M.B., Pandoh. He admitted Ex. PX as correct but added that item at serial No. 7 in this letter refers to the work where the applicant was working and the case of rigor is not included therein. The applicant has not cared to produce the copy of the letter dated 6-1-1976 relied by him or letter dated 19-1-1977. But I had called for the copies of these two letters from the respondents and perused them. Letter dated 7-1-1976 defines the work where hazard is involved and leaves the matter of categories entitled to hazardous allowance to be decided by the General Manager and Financial Advisor Beas Project. Second letter dated 19-1-1977 defines categories of workers in different works entitled to hazardous allowance but rigor is not mentioned being entitled. The result is that there is no basis for the applicant's claim for hazardous allowance.

## Issue No. 2

6. Because of the finding on issue No. 1 the applicant is not entitled to any amount of the hazardous allowance.

## Issue No. 3 (Relief)

7. The applicant fails and his claim is rejected. No order regarding costs.  
Announced.

Dated: 17th October, 1980.

H. D. KAINTHLA,  
Presiding Officer, Labour Court for State of  
Himachal Pradesh (District and Sessions Judge, Solan Division),  
Circuit at Sundernagar.

Shri Durga Dass Versus Dehra Friends Transport Co-operative Society Ltd.  
CASE NO. 92/78

17-10-1980. Present: Applicant in person.  
Major Munshi Ram for respondent.

## ORDER

Per statements of the parties this claim petition stands disposed of. The parties have agreed that the applicant shall be paid Rs. 1,128 before 31st January, 1981. The award is accordingly made against the respondent and in favour of the applicant.

File be sent to Secretary, Labour Department, Himachal Pradesh Simla.  
Announced.

Dated: 17-10-1980.

H. D. KAINTHLA,  
Presiding Officer, Labour Court for State of Himachal  
Pradesh, Circuit at Sundernagar.

**Before Shri H.D. Kainthla, Presiding Officer, Labour Court for State of Himachal Pradesh  
(District and Sessions Judge, Solan, Sessions Division at Nahan)**

Case No. 55 of 1979

Shri Luder Ram( Ex-Driver) c/o The Mandi Hills Transport Labour Union Thanehra Mohalla, Mandi (Himachal Pradesh) *Applicant.*

*Versus*

The Assistant Manager, H.R.T.C., Kulu Unit

*Respondent.*

Application under section 33-C(2) of the Industrial Dispute Act, 1947

### JUDGEMENT/ORDER

The applicant was working as driver in Himachal Roads Transport Corporation (H.R.T.C.). He has joined the service in 1949 and retired on 30-10-1978. He laid a claim for the dues payable to him by the respondents corporation on account of (i) 74 days compensatory leave salary (ii) arrears of selection grade salary from 2-10-1974 to 31-3-1976 and (iii) C.D.S., amount lying to his credit.

2. The respondents Corporation in their reply, to the claim petition stated that selection grade salary arrears and compulsory deposit scheme amount were being processed and will be paid shortly. Later on they supplemented their reply that these amounts have been drawn and the applicant can collect them any time.

3. In regard to the claim of compensatory leave salary for 74 days it was contended that the applicant had 56 days compensatory leave to his credit upto 30-6-78 and he was directed to avail the said leave vide office memo. dated 22-7-1978 duly conveyed to him. That the applicant neither availed the said leave nor raised any claim in lieu thereof. 18 days further compensatory leave became due to the applicant during the period from 1st July, 1978 to the date of retirement 31-10-1978. The salary claim for this compensatory leave period of 18 days is denied because there is no rule to grant the cash payment for not availing such compensatory leave.

4. To settle the controversy between the parties the following issues were framed:—

- (1) Whether the applicant was not relieved of his duty nor the charge was handed over to another person inspite of written and verbal requests made again and again by the applicant? OPP.
- (2) To what amount of compensation, the applicant is entitled in lieu of 74 days compensatory leave? OPP.
- (3) Relief.

### FINDINGS ON THE ISSUES

#### Issue No. 1

5. The applicant in his claim petition did not make mention that though he was asked by written order to avail the compensatory leave but that he was not relieved from duty to avail the same. This sort of explanation he added in his rejoinder to the reply filed by the respondents to his claim petition wherein they raised the plea that the applicant was asked to avail the compensatory leave but he for his own reasons of getting extra allowances which were not admissible on leave, did not think it advisable to avail the leave. He further added that he had asked verbally and in writing again and again to be relieved from duty and even refused to go on duty on day but the management assured him to make payment of the compensatory leave period dues, due to shortage of drivers in Kulu Unit.

6. The applicant in his own statement in evidence admitted that he was given the order per copy Ex.R1, dated 22-7-1978 for availing compensatory leave with effect from 1-8-1978 by the Incharge, H.R.T.C., Kulu. He has put in copy of his own report for being relieved to avail the leave Ex-AW1/A and also stated that Shri Nand Lal, Assistant Manager, Kulu, told him to carry on working and that he will be paid for the compensatory leave days. Shri Nand Lal, has made statement in evidence that no such report as per copy Ex.-AW1/A, put in by the applicant, was received by him in the office at Kulu nor he ever presented any such application. It is a fake document according to him. This application Ex.AW1/A does not bear any date nor there is any acknowledgement on the part of the corporation office for its having been received by them. The applicant has not dared to call any relevant record of the corporation to prove the fact of such an application being given and received by the respondent corporation in its office at Kulu. The applicant had further admitted in his cross-examination that no written report was made by him to the Manager at Kulu that he was not being relieved.

7. On the side of the respondent, copy of the application Ex.RW1/A of the year, 1972 has been filed wherein the present applicant had foregone 38 days compensatory leave right voluntarily. The respondents have thus tried to show that the applicant had not been availing compensatory leave even in the past and so he had not availed before his retirement also.

8. From the above facts and circumstances of the case, it is clear that the applicant has failed to prove this issue, that he was not relieved of his duties to avail compensatory leave.

#### *Issue No. 2*

9. In face of the findings on Issue No. 1 no compensation amount is due to the applicant.

#### **RELIEF**

10. The applicant's claim is dismissed. But I leave the parties to their respective costs.  
Announced.

**H. D. KAINTHLA,**

*Presiding Officer, Labour Court for State of  
Himachal Pradesh (District and Sessions Judge,  
Solan Division) Circuit at Sundernagar.*

Shri Lakhu Ram, Driver, H.R.T.C., Pathankot.

*Versus*

General Manager, H.P. Road Transport Corporation, Pathankot/Simla.

17-10-1980 *Present:* Shri P.S. Dogra A.R. for the applicant.

Shri O. P. Bhardwaj A.R. for the respondent.

**CASE No. 35/78**

#### **ORDER**

In this case the respondents have traced the C.T.D. account amount of the applicant for the period 1st January, 1962 to 28th September, 1966 of Rs. 570 plus interest vide account No.6595 in 5 years C.T.D. Mandi Town Post Office. The applicant has been informed and his representative has also noted. Now nothing remains to be done in this case. It is consigned to records as the claim is satisfied.

The file be sent to Secretary Labour Department, H.P., Simla. announced.

Dated: 17th October, 1980.

**H.D. KAINTHLA,**

*Presiding Officer, Labour Court for State  
of Himachal Pradesh Circuit at Sundernagar.*

Shri Durga Nand Skipton Villa, Simla  
*Versus*  
 Continental Hotel, the Mall Simla.

8-11-1980 Present: None for the applicant.  
 Shri R.L. Vohra, respondent in person.

Case No. 48/79

The application is dismissed for non-prosecution. No order as to costs.  
 The file be sent to Secretary Labour Department, Himachal Pradesh Government Simla.  
 Announced.

Dated: 8-11-1980.

H. D. KAINTHLA,  
*Presiding Officer, Labour Court  
 for State, of Himachal Pradesh.*

Shri Mehar Chand Sharma, Naya Bazar, Simla.  
*Versus*  
 General Manager, Naya Bazar, Simla.  
 CASE No. 31/79

14-10-1980. Called again none present. It is 1 P.M. Dismissed for non-prosecution as the applicant and the respondent both were served for today's hearing yesterday on the notice issued by this Court. So it appears that the applicant is not interested in pursuing this claim. No order regarding costs. File be sent to Secretary, Labour Department, Simla, Himachal Pradesh.

H. D. KAINTHLA,  
*Presiding Officer, Labour Court  
 for State of Himachal Pradesh.*

Before Shri H. D. Kainthla, Presiding Officer, Labour Court for State of Himachal Pradesh  
 Circuit at Solan

Case No. 21/80  
 Instituted on 19-9-1980  
 Decided on 12-11-1980

Kishori Lal Banta House No. 6/2, Amar Niwas, Boileauganj, Simla *Applicant.*  
*Versus*  
 M/s Shankar and Company, Ram Mandir Market, Simla *Respondent.*

Application under section 33-C (2) of Industrial Dispute Act  
 ORDER

The applicant claims to be workmen of the respondent company. He claims money benefit of Rs. 3,277.50 paise per details as under:—

1. One month pay for July, 1980 .. .. ..	Rs. 345.00
2. One month pay in lieu of notice .. .. ..	Rs. 345.00
3. Retrenchment compensation given to fifteen day average pay (for every completed year of continuous service) or any part thereof in excess of six months; and (period with effect from 12-11-1965 to 31-7-1980) 15 years @ Rs. 172.50 as the monthly emoluments of the applicant was Rs.345.00 p.m.	Rs. 2587.50
Total	Rs. 3,277.50

2. The applicant has prayed that the Court be pleased to determine the amount due to him. It appears that the applicant's services attached as workman of the respondent company were terminated/retrenched from 1-8-1980.

3. On behalf of the respondent one Devender Lal Sood partner of M/s Shankar and Co., Ram Mandir Market, Simla has put in reply to the applicant's claim dated 8-11-1980. On respondent's side it is alleged that this Labour Court has no jurisdiction to go into this case as the respondent firm is only a shop and not an establishment as contemplated by Industrial Dispute Act. The services of the applicants are alleged to be regulated by Himachal Pradesh Shops and Commercial Establishment Act, 1969.

4. On merits it is alleged that no liability for retrenchment compensation arises against the respondent while the salary for the month of July and one month's salary in lieu of notice of removal from service under section 22 of H.P. Shops and Commercial Establishment Act, 1969 were being paid to the applicant who refused to accept the amount.

The respondent is ready to pay the said amount any time to the applicant.

5. The following issues in the case have been framed:—

- (1) Whether this claim petition is not entertainable by Labour Court as the case is covered by Shops and Establishment Act and not by Industrial Dispute Act? OPR.
- (2) To what amount of retrenchment compensation the applicant is entitled ? OPP.
- (3) Relief.

### FINDINGS ON THE ISSUES

#### *Issue No. 1*

6. The respondent firm is carrying on business of running a shop within the Municipal Area of Simla to which Himachal Pradesh Shops and Commercial Establishments Act, 1969 applies. This Act is a special legislation providing for the commercial establishments. Sub-section (4) of section 1 provides the extent of the operation of the Act.

7. Under the Act both "Commercial establishment" as well as "shops" have been defined. The business of respondent firm falls within the purview of definition of shop as section 2(xxvii) of the Act No. 10 of 1970 runs as under:—

"Shop means any premises where any trade or business is carried on or where services are rendered to customers and includes office, store-rooms, godowns, sale depots or ware houses whether in the same premises or otherwise used in connection with such trade or business but does not include a commercial establishment or a shop attached to a factory where the person employed in the shop are allowed the benefits provided for workers under the Factories Act, 1948."

8. As such the Act No. 10 of 1970 will determine the nature of undertaking of the respondent, which is restrictive in its meaning and not by section 2(j) of Industrial Disputes Act.

9. It has been held in P.M. Murugappa Mudaliar Rahina Mudaliar and Sons *versus* Raju Mudaliar 1965 (1) LLJ, 489 that a retail shop run by two partners with the assistance of salesman is not an industry hence the respondent firm cannot be designated as Industry for invoking the provisions of section 33-C of Industrial Disputes Act.

10. Similarly, words "employee" and "employer" have also been respectively defined under the Act which would determine the real relation between the applicant and the respondent. Section 2(vi)&(vii) of H.P. Shops and Commercial Act, 1969 may be perused in this behalf.

The service and working conditions of the applicant were governed under Act No. 10 of 1970 under which various sections are as under:—

Section 6.—Conditions of employment.

Section 7.—Hours of emp'oyment.

Sec. 8 to 12.—Deal with Holidays working hours. etc.

Sections 16 to 18.—Deal with wages, which are being regularised by Government Notifications.

Section 22.—Deals with the removal of employee.

11. In the present case the applicant was removed from the services under section 22 of H.P. Shops and Commercial Act after offering him one month's salary in lieu of the removal, which amount applicant refused to accept. Section 22 of the Act does not contemplate any other requirement to be fulfilled before removing any person from service employed in shop.

12. Power has been vested with the Magistrate to determine and impose fine etc., in case of contravention of provisions of section 22 of the Act which runs as under:—

"22. (1) No employee shall be removed from service unless and until one month's previous notice or wages in lieu thereof has been given to him.

(2) In any case instituted for a contravention of the provisions of sub-section (1), if a Magistrate is satisfied that an employee has been removed without reasonable cause, the Magistrate shall, for reasons to be recorded in writing, award compensation to the employee equivalent to two month's wages:

Provided that no such claim shall be entertained unless it is preferred by the employee with-employee in six months from the date of his removal."

13. Thus, in view of the specific provision of H.P. Act No. 10 of 1970 this court has no jurisdiction to try and decide the matter in dispute.

14. It would be pertinent to mention here that the dues to which the applicant was entitled were offered to him and he refused to accept the same. Since the respondent firm is not an industry and is governed by the Act No. 10 of 1970 (H. P.) the applicant falls within the definition of an employee under this Act and not under the definition of workman. Section 2 (s) of the Industrial Dispute Act. As such, the applicant has no *locus standi* to file the present application. The issue is held in the affirmative.

#### *Issue No. 2*

15. In face of the finding on Issue No. 1 no retrenchment compensation is awardable to the applicant.

#### *Relief*

16. In result the applicant gets no relief, under this application which is rejected. No. order as to costs.

17. The order may be communicated to the parties by sending a copy of the order. Announced.

Dated: 12th November, 1980.

H. D. KAINTHLA,

*Presiding Officer, Labour Court  
for State of Himachal Pradesh,  
Circuit at Solan.*

शादेशनुसार.  
हस्ताक्षरित,  
सनिव (अम), ।

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नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला-५ द्वारा मुद्रित तथा प्रकाशित।